

ITEM 9-C

CITY OF ALAMEDA

Memorandum

To: Honorable President and
Members of the Planning Board

From: Laura Ajello
Planner II

Date: April 9, 2012

Re: Variance, Design Review and Use Permit Amendment for expansion of the building and the convenience store use at the 76 Gas Station located at 1716 Webster Street

EXECUTIVE SUMMARY

The applicant is requesting an amendment to an existing Use Permit to allow alcohol sales, a Variance to permit the construction of a new 2,575 square foot building within the required rear and side yard setbacks to allow an expansion of the existing 100 square foot convenience store and Design Review. In order to accommodate the proposed development, the applicant proposes demolition of an existing 1,552 square foot service building with three (3) service bays. In October 2010, the Historic Advisory Board agreed that the existing building is not a historic resource and can be demolished.

The applicant proposes locating the new building on the rear and side property lines, which requires variances from the setback requirements of the Alameda Municipal Code (AMC). The applicant determined the proposed location is the most appropriate because it allows for development of a larger convenience store with no impact to existing pumps and associated underground fuel tanks.

Staff is not able to make the required findings to recommend approval of the required variances, but does support the amended use permit application to permit alcohol sales and the proposed architectural design of the building.

At the conclusion of the public hearing, after consideration of the staff report and public comments, the Planning Board may do one of the following:

1. Make the findings for the variance, design review and the use permit, thereby approving the application, as presented.
2. Share comments with the applicant as to whether or not each member could support each of the requested entitlements or if they felt, for example they could support the use permit and the general features of the use permit, but not the variance, and see if the applicant would like a continuance to redesign the project, based on the feedback.

3. Deny the variance (which would effectively make the design review null) and make a separate determination as to the use permit (approve or deny).
4. Deny all the entitlements before the Board.

This report lists the findings that staff was able to provide in support of the project. It also notes concerns that staff has regarding the variance and offers issues that the Board could consider to approve the requested entitlements.

The West Alameda Business Association supports this application but some neighbors oppose the application. Details of this discussion are contained in the body of the staff report.

BACKGROUND

The site is located at the corner of Buena Vista Avenue and Webster Street. The existing 76 gas station includes 8 gas pumps and the small 1,552 square foot service station building along the side and rear of the property.



The property is located in the C-C, Community Commercial district ("CC zone"). In the CC zone, commercial and retail uses are required to provide a setback from the side or rear property line, if the use is on a parcel adjacent to a residential zone or use. In addition, the AMC requires that gas stations provide an additional setback from adjacent residential properties, because of the nature of the use (gasoline odor, gas pumping noise, service uses, and the fact that many of these operations occur outdoors and not within an enclosed building).

Subject Property, Built in 1955



**R-5 Zone; 706 Buena Vista, Triplex
Built in 1906**



**C-C Zone; 1712 Webster, Historical Resource
Built in 1903**

In this case, residential uses exist on two sides of the property. The subject property adjoins a residential building with a residential use on Webster Street (1712 Webster) and a residential use in a residential zone on Buena Vista Street (706 Buena Vista).

Variance Application:

The applicant's proposal requires that the City grant a variance from the AMC setback requirements for gas stations adjacent to residential uses. According to the AMC, the narrow side of this corner lot is the "front" of the property, the property line adjacent to the Webster street residential property is the "rear" of the property, and the property line adjacent to the property on Buena Vista is the "interior side" property line.

AMC section 30-4.9A subsections g.5, g.6 and g.7, require the following setback requirements:

AMC 30-4.9A(g) Development Regulations

5. Side Yard: No yard or a minimum of twelve (12') feet [*where the rear portion of the lot is accessible from a street, alley or parking lot, or combination thereof*], however, where any lot abuts a residential district there shall be a minimum side yard of five (5') feet.
6. Rear Yard: None, however, where the rear portion of the lot is accessible from a street, alley or parking lot, or combination thereof, the rear yard shall be a minimum of twelve (12') feet; provided, further, that any structure may project over such required rear yard if a fourteen (14') foot clear vertical distance between the structure and ground level is maintained.
7. Yards for Gasoline Service Stations (In addition to the yard requirements prescribed for the zoning districts):
 - (a) A setback of ten (10') feet shall be maintained from property lines that abut the rear yard of a lot located in a residential district or a lot in residential use.
 - (b) A setback of fifteen (15') feet shall be maintained from property lines that abut the side yard of a lot located in a residential district or in residential use.

Therefore, the side yard setback (property line between the commercial property and the residential district) will 20 feet, the rear yard shall be 27 feet. The existing service station building has a 20-foot side yard and an 18-foot rear yard setback. The current proposal provides for no setbacks along the side or rear property lines.

In order to approve the variance applications, the Planning Board must make all three of the following findings:

1. There are exceptional or extraordinary circumstances applying to the property involved or to the proposed use of this property.

Staff has determined that there are no existing "exceptional or extraordinary" circumstances that apply to this property. The site is a fairly typical corner

property measuring 101 feet wide (on Buena Vista) by 125 feet long (on Webster Street). The site is flat and has two street sides allowing for easy access and good visibility. Staff notes that the applicant could reduce the building size, use the existing building or reconfigure the existing service station layout to accommodate a new convenience store floor plan. There are no physical constraints to redesigning the site to avoid the necessary variances requested.

- 2. Because of such exceptional or extraordinary circumstances, the literal enforcement of specified provisions of this section would result in practical difficulty or unnecessary hardship such as to deprive the applicant of a substantial property right possessed by other owners of property in the same class of district.**

There are no exceptional or extraordinary circumstances, that the enforcement of setback standards would result in an unnecessary hardship or deprive the applicant of a substantial property right. The existing building is small, but if the building were remodeled to replace the service bays with convenience store space, the store could be expanded within the existing building from approximately 100 square feet to approximately 1,500 square feet without requiring a variance from the AMC. There are options to developing the property with a larger convenience store that is not difficult or denies a substantial property right.

- 3. The granting of the variance will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to persons or property in the vicinity.**

Staff is also challenged to make this finding. While it is possible that a commercial building can be built on the property lines without causing a detriment to the public welfare or injury to people living in adjacent residential buildings, in this instance the expansion of an existing convenience store adjacent to a property line may bring light and noise much closer to the existing residential uses.

The increase in the size of the convenience store from 100 square feet to 2,500 square feet may result in a larger number of customers and the proposed liquor sales may have an impact on nighttime activity. Due to the increase in square footage, lighting, and number of customers there may be adverse impact to the neighboring residences, in particular during evening hours. Therefore, staff recommends a condition of approval to limit the sale of alcohol to midnight.

Additional Issues and Options for Planning Board Consideration:

Although staff was not able to make the necessary findings for recommending approval of the Variance, the Planning Board could consider the following factors in an effort to make the findings for approval of the variance, either as proposed or with a reduced setback requirement.

The applicant is proposing to place a commercial building on the property line. He is not placing the gasoline pumping facilities on the property line. The convenience store building does not pose any of the impacts on adjacent residential uses that would be associated with the pumping of gasoline (odors, noise, etc.) In this case, the gasoline pumping facilities are not moving any closer to the adjacent property lines.

The gas station occupies two parcels that are in common ownership. Since the service station is located on one of the parcels, and the gas pumps are located on a second parcel, the applicant has suggested that the proposed new building should not be considered a "gasoline service station" building but instead should be considered a separate "convenience store" building.

Staff was uncomfortable with the interpretation that the pumps constitute the "gasoline service station" and the adjacent building is not part of the "gasoline service station" use. However, the Planning Board could make this interpretation, which would reduce the variance requests. If the new building were considered a "convenience store" and not a "gasoline service station", then the setback requirements under the AMC (see Subsections above) would be reduced to only 5 feet on the Buena Vista side and 12 feet on the Webster Street side. (The application would still need variances, but the size of the needed variances would be reduced.)

Lastly, if the Planning Board believes that the convenience store building should not be subject to the additional "gasoline service station" setbacks, but the Planning Board is uncomfortable with the interpretation that the building is not part of the "gasoline station" use, then the Board could request that staff prepare an amendment to the CC code to refine the "service station" setback requirements to clarify that the setbacks are required for the facilities that "pump, store, and shelter gasoline and gasoline pumping or facilities for the washing and servicing of automobiles". Associated facilities such as "cashiers offices, convenience markets, and air and water facilities" would only need to meet the setback requirements for typical commercial structures abutting residential use (i.e. 5 feet). (Staff is already proposing other modifications to the CC District to address "massage uses" and "tattoo uses.") Please note that the same yard restrictions for gasoline service stations apply to the C-2, Central Business District zoning district (AMC §30-4.9(g)(7)).

Design Review Application

Staff has reviewed the proposed architectural design for the new building. The project architect is a member of the WABA Design Committee and he designed the façade of the new building is to comply with the standards of the Webster Street Design Manual. The new building will be 4 feet taller than the existing building and have two small exterior doors in very close proximity to property lines shared with residential neighbors. These doors are directly in line with windows on each residence; the building department has verified the doors are not required to be lit by electrical code standards. Any lighting on these walls and doors would need to be low intensity, shielded and downward facing so as to not shine into residential windows.

The proposal has a total of 5 parking spaces, which is in compliance with the newly revised parking ordinance that reduced the parking requirements for businesses within the C-C, Community Commercial Zoning district. An analysis prepared by Fehr and Peers, Transportation Consultants made a number of suggestions to improve circulation and safety, which Public Works has incorporated into their conditions of approval for the project should the project be approved.

Use Permit Amendment Application

The property was issued a use permit in 1995 to operate a “convenience store” in the service station building. The 1995 use permit limits the store to 100 square feet and specifically prohibited alcohol sales. The applicant requests an amendment to the Use Permit to permit alcohol sales and to allow for a store greater than 100 square feet.

The applicant proposes to limit alcohol sales to no more than 20% of the floor area and proposes to sell alcohol during lawfully permitted hours (6 AM to 2 AM of the following day). Currently, two stores within 300 feet of this store also sell alcohol (Best Buy Liquor and 7-11). The Chevron station directly across the street also operates a convenience store within the service station building and does not currently sell alcohol.

Neighborhood Concerns

Two neighbors have voiced opposition to the sale of alcohol. One neighbor owns the triplex directly next door and reports that he has experienced problems with noise and parking with the current store. He expressed concerns that a larger convenience store could exacerbate these problems and possibly result in a problem with loitering and on-site alcohol consumption. The second comment in opposition came from a neighboring business that also sells alcohol. (See public comments Attachment 6).

In order to approve the Use Permit application, the Planning Board must make all of the following findings:

1. The location of the proposed use is compatible with other land uses in the general neighborhood area, and the project design and size is architecturally, aesthetically, and operationally harmonious with the community and surrounding development.

Convenience store goods and services are commonly provided at gasoline service stations. The sale of alcoholic beverages for off-site consumption from gasoline service station convenience markets is also quite common and can be conducted in a manner that does not cause problems for adjacent businesses and residents. This location has been used as a service station and convenience store for over 15 years and has operated in harmony with surrounding uses. The area has similar uses and the project site is located on a prime commercial corner and is appropriate for this use. Staff supports the sale of alcohol for off-site consumption with the condition that the hours that alcohol are allowed to be purchased are not permitted after midnight, which is consistent with the other neighboring liquor store in the immediate area.

2. The proposed use will be served by adequate transportation and service facilities, including pedestrian, bicycle and transit facilities.

The site is well served by transit (AC Transit lines 20, 31, 51A, 851, O, W) and pedestrian facilities, although it is anticipated that most customers will arrive by automobile and will purchase goods at the convenience market while their automobile is at the gasoline pumps. The five on-site parking spaces will provide for those customers that are not purchasing gasoline.

3. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity and will not have deleterious effects on existing business districts or the local economy.

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4. The proposed use relates favorably to the General Plan.

General Plan policies support expansion of local businesses and provision of a broad range of goods and services for Alameda residents.

ENVIRONMENTAL REVIEW

This project is categorically exempt from further environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15301 (a) – Minor Expansion to Existing Facilities.

PUBLIC NOTICE

A notice for this hearing was mailed to property owners and residents within 300 feet of this site, published in the Alameda Journal and posted at the subject property. Staff received one comment as of March 21, 2012. The owner of the neighboring residential buildings at 706, 710, and 714 Buena Vista Avenue is opposed to the use permit amendment, variance, and reduced parking. He believes that not enough parking is provided currently, does not wish to have the 20 foot set back requirement reduced to zero and pointed out that there is an abundance of nearby retail stores that sell alcoholic beverages. The West Alameda Business Association design review committee has approved the design of the new building. Previously during the Historical Advisory Board review staff received one letter on September 27, 2010 from a neighboring business owner at 1801 Webster who opposes this project based on competing liquor sales. A fax from this same neighbor was received on March 26, 2012. The owner the adjacent residential property at 706 Buena Vista is opposed to all aspects of the project;

his comments were emailed to staff on March 22, 2012. Letters from the adjacent property owners have been provided in Attachment 6.

RECOMMENDATION

Staff recommends that the Planning Board:

- Deny the Variance and Design Review based on the findings in the attached resolution (Attachment 1); and
- Approve the Use Permit amendment to allow the sale of alcoholic beverages, as conditioned in the attached resolution (Attachment 2).

Respectfully submitted,

Laura Ajello
Planner II

Attachments:

1. Draft Resolution to deny Variance & Design Review
2. Draft Resolution to approve amended CUP
3. Site and Removal Plan
4. Existing Use Permit PB-95-57
5. Traffic Circulation & Parking Study dated 1/9/12
6. Public Comments
7. Application and supplemental information